

**REMARKS****Claim Status**

Claims 1, 3-6, and 12-21 are pending in the application. This paper amends claim 21. Claims 1, 12, and 17 are the independent claims of the application.

**Claim Objection**

The Office Action objected to claim 21, which previously depended from claim 15, because “claim 15 is an apparatus claim and claim 21 is [directed to] an article of manufacture.” Claim 21 has now been amended. As amended, claim 21 depends from claim 17, which is also directed to an article of manufacture. Applicant respectfully submits that amendment of claim 21 obviates the objection.

**Art Rejections**

The Office Action rejected all pending claims of the application under 35 U.S.C. § 102(e) as being anticipated by Malmgren *et al.*, International Publication Number WO 00/22865 (“Malmgren” hereinafter). With respect to independent claims 1, 12, and 17, the Office Action

stated that “Malmgren discloses selecting physical and media access control (MAC) parameters for automatic retransmission” in figures 1 and 2, and in column 8, lines 28-33. (Applicant understands citations to Malmgren’s “columns” to refer to pages of that document.) The Office Action further cited Malmgren at column 2, lines 1-15; column 7, lines 24-33; column 9, lines 10-16; and claims 2, 4, 6, 13, and 18 as disclosing all limitations of the independent claims. For the following reasons, Applicant respectfully traverses the rejections.

Malmgren does not disclose selecting physical and media access control (MAC) parameters for automatic retransmission. To be sure, Malmgren mentions “retransmission” in several places. It appears however, that Malmgren does not disclose selecting automatic retransmission parameters or sending the automatic retransmission parameters downstream.

On page 2, for example, Malmgren teaches that

one MT could have a connection carrying video using a powerful FEC (Forward Error Correction) code, whereas a connection for file transfer uses a less strong FEC but with ARQ (Automatic ReQuest for retransmission) capabilities.

Typical reception quality measures are:

retransmission rate (PER, Packet Error Rate),

delay spread (time dispersion),

received signal strength (RSSI),

Signal-to-Interference Ratio (SIR)

Bit Error Rate (BER)

Combinations of these performance measures and others are also possible.

Malmgren, page 2, lines 1-14 (underlining added). As regards retransmission, it appears that the

quoted text discloses use of Automatic ReQuest for retransmission and use of retransmission rate (which may be responsive to the packet error rate) as a measure of reception quality. Assuming that retransmission rate is a “physical” or “media access control” parameter, the quoted text apparently does not disclose that the retransmission rate or another retransmission parameter is selected and included “in a control section of a frame, . . . for sending [or communicating] control information downstream,” as recited in independent claims 1, 12, and 17.

Malmgren also mentions “retransmission” on pages 3 and 4:

A drawback is that in GRPS it is not possible to change channel coding during retransmission phase.

EDGE, EGPRS: These two systems apply net rate link adaptation (select channel coding and modulation alphabet) per mobile terminal. No protocol exists yet. However, the structure and protocol is based on the GPRS structure and a similar protocol will be utilised. Extensive simulation studies have been performed on the system throughput and can be found in [2].

The problem with changing channel coding during retransmissions is solved by doing re-segmentation. However, the frame structure used in these systems is not suited for a TDD system.

Malmgren, page 3, line 28, through page 4, line 6 (underlining added). Note that once again the quoted text apparently fails to disclose sending or transmitting physical or MAC retransmission parameters downstream.

A “claim is anticipated if each and every limitation is found either expressly or inherently in a single prior art reference.” *Celeritas Technologies, Ltd. v. Rockwell Int’l Corp.*, 150 F.3d 1354, 1361, 47 U.S.P.Q.2d 1516 (Fed. Cir. 1998). “The identical invention must be shown in as complete detail as is contained in the patent claim.” *Richardson v. Suzuki Motor Corp.*, 868 F.2d 1226, 1236, 9 U.S.P.Q.2d 1913, 1920 (Fed. Cir. 1989) (quoted with approval in MPEP § 2131). Malmgren does

not disclose sending physical or MAC automatic retransmission parameters downstream, and therefore does not disclose an “identical invention” having “each and every limitation” of the claimed invention. At least for this reason, Malmgren does not anticipate independent claims 1, 12, and 17.

Dependent claims should be patentable together with their base claims and intervening claims, if any.


**CONCLUSION**

For the foregoing reasons, Applicant respectfully submits that the pending claims of the present application are patentable over the art of record. To discuss any matter pertaining to the application, the Examiner is invited to call the undersigned attorney at (858) 720-9431.

Having made an effort to bring the application in condition for allowance, a timely notice to this effect is earnestly solicited.

Respectfully submitted,

Dated: 3/10/2005

  
ANATOLY WEISER  
Reg. No. 43,229

The Swernofsky Law Group  
P.O. Box 390013  
Mountain View, CA 94039-0013  
(650) 947-0700